CHAPTER 8

FOREIGN TRADE POLICY

For the sake of brevity, Foreign Trade Policy has been referred to as FTP at many places in this Chapter.

LEARNING OUTCOMES

After studying this chapter, you would be able to:

- explain the legislation governing FTP, salient features of FTP, administration of FTP, contents of FTP and other related provisions.
- appreciate and explain the basic concepts relating to import and export of goods under FTP.
- analyse the basic concepts relating to export promotion schemes provided under FTP namely, duty exemption and remission schemes, RoDTEP scheme, EPCG scheme, EOU, EHTP, STP & BTP schemes, deemed exports.

CHAPTER OVERVIEW

Salient Features of FTP	Administration of FTP	Contents of FTP
Trade Facilitation & Ease of doing business	Provisions regarding imports and exports	Duty Exemption and Remission Schemes
Export Promotion Capital Goods Scheme [EPCG]	EOU, EHTP, STP and BTP	Deemed Exports

UNIT – I: INTRODUCTION TO FTP

1. INTRODUCTION

In the era of globalization, international trade has become the lifeline of any economy. Today, international trade has begun to play a significant part in the Indian economy reflecting its increasing integration in globalisation.

International trade not only enables a nation to specialize in the goods which it can produce most cheaply and efficiently, but also to consume more than it would be able to produce with its own resources. International trade enlarges the potential markets for the goods of a particular economy.

Foreign Trade Policy is a set of guidelines or instructions issued by the Central Government which specifies policy for exports and imports viz., **foreign trade**. It's primary purpose is not merely to earn foreign exchange, but also to stimulate greater economic activity.

Legislation governing foreign trade:

In India, Ministry of Commerce and Industry governs the affairs relating to the promotion and regulation of foreign trade.

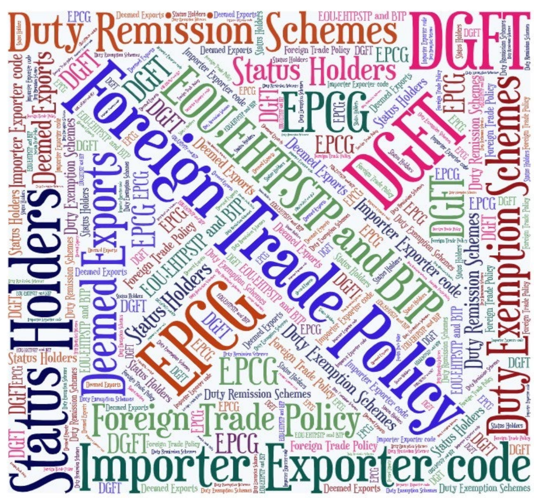
The Foreign Trade Policy, 2023, (as updated) is notified by the Central Government, in exercise of powers conferred under **Section 5 of the Foreign Trade (Development & Regulation) Act, 1992** [FT(D&R) Act], as amended.

The main legislation concerning foreign trade is the **Foreign Trade (Development and Regulation) Act, 1992 FT(D&R) Act**. The FT(D&R) Act provides for the development and regulation of foreign trade by facilitating imports into, and augmenting exports from, India and for matters connected therewith or incidental thereto. As per the provisions of the Act, the Central Government: -

(i) may make provisions for facilitating and controlling foreign trade;

(ii) may prohibit, restrict and regulate exports and imports, in all or specified cases as well as subject them to exemptions;

(iii) is authorised to formulate and announce an export and import policy and also amend the same from time to time, by notification in the Official Gazette;



(iv) is also authorised to appoint a 'Director General of Foreign Trade' for the purpose of the Act, including formulation and implementation of the export-import policy.

Foreign Trade Policy: In exercise of the powers conferred by the FT(D&R) Act, the Union Ministry of Commerce and Industry, Government of India generally announces the integrated **Foreign Trade Policy (FTP)** with certain underlined objectives. The Foreign Trade Policy was earlier called as Export Import policy i.e., EXIM Policy. However, export import policy is now referred to as Foreign Trade Policy (FTP) of the country as it covers areas much beyond export and import. This policy is updated every year, in addition to changes that are made throughout the year.

The FTP, in general, aims at developing export potential, improving export performance, encouraging foreign trade and creating favorable balance of payments position. The policies are driven by factors like export led growth, improving efficiency and competitiveness of the Indian industries, ease of doing business etc.

2. SALIENT FEATURES OF FTP

The following are some of the key attributes of the FTP:

- Export-Import of goods and services is generally free unless specifically regulated by the provisions of the Policy or any other law for the time being in force.
- Export and import goods are broadly categorized as – (a) Free (b) Restricted (c) Prohibited.
- Some goods are 'free' for import and export but can be imported/exported only through State Trading Enterprises (STE).
- There are restrictions on exports and imports for various strategic, health, defence, environment, and other reasons. If the goods are restricted for import/export but not prohibited, the Government can give a permission/license for specific reasons.
- Exports are promoted through various promotional schemes.
- Goods and services to be exported but, not the taxes. Hence, any indirect taxes on exports are either exempted or refunded on both outputs and inputs, through application of various schemes in the form of Duty Exemption / Duty Refund (Drawbacks and Rebates), as the case may be.

- Capital goods can be imported at NIL duty for the purpose of exports under the scheme of EPCG.
- For units undertaking to export all their production, there are special schemes so that they can avoid taxes at every stage under the scheme of EOU/SEZ.

FEATURES

- In certain specified cases imports get duty exemption/concession/remission for certain special purposes. In such cases, to enable domestic suppliers to compete with the international suppliers, the supplies of domestic suppliers are treated as deemed exports.

Foreign Trade Policy 2023 -The present Foreign Trade Policy, which was announced on 01.04.2023, is an integrated policy for relating to export and import of goods and services. shall come into force with effect from 1st April 2023 and shall continue to be in operation unless otherwise specified or amended.

WTO Provisions in respect of foreign trade – India is member of World Trade Organisation (WTO). The four main WTO guidelines are –

(i) Trade without discrimination

(ii) Predictable and growing market access

(iii) Promoting fair competition and

(iv) Encouraging development and economic reforms.

WTO promotes free trade by lowering tariffs, quotas, import restrictions, quantity restrictions etc. Countries should ‘bind’ their commitments so that stability and predictability and investment is encouraged.

WTO discourages direct export incentives or subsidies on goods or services exported, as it distorts free competition. However, goods and services can be made free of Indian taxes. Hence, all our export promotion schemes are designed to suit WTO stipulations.

3. ADMINISTRATION OF THE FTP

The FTP is formulated, controlled and supervised by the office of the Director General of Foreign Trade (DGFT), an attached office of the Ministry of Commerce

& Industry, Government of India. DGFT has several offices in various parts of the country which work on the basis of the policy formed by the headquarters at Delhi.

DGFT issues **authorization** (earlier called as licence) for import/export. 'Authorization' means a permission in terms of the FTDR Act to import or export (which is applicable for only specified goods which are restricted). It also grants **Importer Exporter Code** (IEC) Number to importers and exporters. Import and Export without IEC number is not permitted, unless specifically exempted.

Decision of DGFT is final and binding in respect of interpretation of Policy, or provision in Handbook of Procedures, Appendices and Aayat Niryat Forms or classification of any item for import / export in the ITC (HS). A Policy Interpretation Committee (PIC) may be constituted to aid and advice DGFT.

Exemption from Policy/Procedures

DGFT may in public interest pass such orders or grant such exemption, relaxation or relief, as he may deem fit and proper, on grounds of genuine hardship and adverse impact on trade to any person or class or category of persons from any provision of FTP or any Procedures.

While granting such exemption, DGFT may impose certain conditions after consulting Norms Committees (for Fixation/modification of product norms under all schemes), EPCG Committee (Nexus with Capital Goods (CG) and benefits under EPCG Schemes) and Policy Relaxation Committee (PRC) (for all other issues).

If an importer/ exporter is aggrieved by any decision taken by PRC, or a decision/order by any authority in the DGFT, a specific request for Personal Hearing (PH) has to be made to DGFT. DGFT may consider request for relaxation after consulting concerned Norms Committee, EPCG Committee or Policy Relaxation Committee (PRC) and the decision conveyed in pursuance to the personal hearing shall be final and binding.

Government is committed to easy and speedy redressal of grievances from Trade and Industry.

The Settlement Commission[1] set up by the Department of Revenue has been empowered to settle matters of default in export obligation also.

[1] ***Settlement Commission/ Interim Board provides the taxpayers a one-time opportunity to settle pending disputes related to customs duties in a speedy manner***

Other authorities involved: Though the FTP is formulated by DGFT, it is administered in close coordination with other agencies. Other important authorities dealing with FTP are:

(1) **Central Board of Indirect Taxes and Customs (CBIC):** CBIC comes under Ministry of Finance and its two Departments namely, Customs and GST facilitate in implementing the provisions of the FTP.

Customs Department is responsible for clearance of export and import goods after their valuation and examination. Customs authorities follow the policy formed by the DGFT while clearing the imported and export goods.

Since there is GST on almost all the goods and services (except petroleum products, tobacco products and alcoholic liquor), Central GST authorities need to be involved for all matters of exports, where goods have to be cleared with/without payment of GST.

(2) **Reserve Bank of India (RBI):** RBI is the nodal bank in the country which formulates the policies related to management of money, including payments and receipts of foreign exchange. It also monitors the receipt and payments for exports and imports. RBI works under the Ministry of Finance.

(3) **State GST Departments:** To avoid dual control, some taxable persons are under jurisdiction of State GST authorities. In their case, State GST Authorities are controlling authorities.

4. CONTENTS OF FOREIGN TRADE POLICY

The contents of the FTP 2023 are as follows

(i) **FTP 2023:** having 11 Chapters giving basic policy. This has been notified by the Central Government on 01.04.2023.

(ii) **Handbook of Procedures 2023:** (HBP 2023) containing 11 chapters, covering procedural aspects of policy. This has been notified by Director General of Foreign Trade on 01.04.2023. It is amended from time to time as per requirements. Also, it contains **Appendices and Aayat Niryat Forms (AANF)** containing various appendices and forms relating to the procedural aspects provided under the policy and procedures and Standard Input-Output

and avoid prolonged litigation. Said provisions are outside the scope of syllabus of Paper 5 -Indirect Tax Laws.

Norms[2] (SION) of various products notified from time to time. Based on SION, exporters are provided the facility to make duty-free import of inputs required for manufacture of export products under the Duty Exemption Schemes like Advance Authorisation and DFIA.

(iii) ITC (HS) classification of exports and import items: The Export Import Policy regarding import or export of a specific item is given in the Indian Trade Classification Code based on Harmonized System of Coding [ITC(HS)]. ITC-HS Coding was adopted in India for import-export operations. Indian customs uses eight digit ITC-HS Codes to suit the national trade requirements.

CONTENTS OF FTP

ITC-HS codes are divided into two schedules. **Schedule I - Import Policy – ITC(HS) 2023** describe the rules and guidelines related to import policies whereas **Schedule II– Export Policy – ITC(HS) 2023** describes the rules and regulation related to export policies. Presently, most of the goods can be imported without any authorization. Schedule II contains very few products, where export is prohibited or restricted. Excluding those items, export of all other goods is free. **SCOMET LIST** is also provided

Any changes or formulation or addition of new codes in ITC-HS Codes are carried out by DGFT (Directorate General of Foreign Trade).

Foreign Trade Policy *vis a vis* tax laws: The Foreign Trade Policy is closely knit with the Customs, GST Laws and Excise/state laws of India. However, the policy provisions *per-se* do not override tax laws. The exemptions extended by FTP are given effect to by issuing notifications under the respective tax laws (e.g., Customs Tariff Act). Thus, actual benefit of the exemption depends on the language of exemption notifications issued by the CBIC. In most of the cases the exemption notifications refer to policy provisions for detailed conditions. Ministry of Finance/ Tax Authorities cannot question the decision of authorities under the Ministry of Commerce (so far as the issue of authorization etc. is concerned).

FTP, Handbook of procedures under FTP, CGST Act, SGST Act, IGST Act, Central Excise Act (for petroleum products and tobacco products), Customs Act and notifications issued hereunder form an integrated scheme of indirect taxation. All these statues have to be read as a whole and not in isolation, since they are series of statues relating to the related subject matter.

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[2] *SION specify the quantity and value of inputs that can be used for the production of specific export items and the corresponding quantity of output that can be expected.*

5. SCOPE OF FTP

The FTP covers the policies and regulations with respect to the following matters:

Chapter No.	Contents of Foreign Trade Policy
1	Legal framework and trade facilitation
2	General provisions regarding imports and exports
3	Developing districts as export hubs
4	Duty exemption remission schemes
5	Export promotion Capital Goods (EPCG) Scheme
6	Export Oriented Units (EOUS), Electronics Hardware Technology Parks (EHTPS), Software Technology Parks (STPS) and Bio-Technology Parks (BTPS)
7	Deemed exports
8	Quality Complaints and Trade Disputes
9	Promoting cross border trade in digital economy
10	Scomet: special chemicals, organisms, materials, equipment and technologies
11	Definitions

Provisions relating to Special Economic Zone (SEZ) are contained in a separate Act and are not part of FTP. However, provisions of SEZ are closely related to Foreign Trade Policy.

Handbook of Procedures (HBP 2023) has 11 corresponding chapters which mainly deal with procedural aspects of the foreign trade policy.

6. TRADE FACILITATION AND EASE OF DOING BUSINESS

Since India ratified the World Trade Organization's Trade Facilitation Agreement (TFA), there's a special focus on implementing the international trade facilitation measures. DGFT, in consultation with Export Promotion Councils and Trade and Industry bodies, dedicatedly functions as a facilitator of exports and imports. National Committee on Trade Facilitation (NCTF) has been constituted to facilitate coordination and implementation of the TFA provisions. National Trade Facilitation Action Plan aims to achieve:

- Improvement in Ease of Doing Business through reduction in transaction cost and time
- Reduction in cargo release time
- A paperless regulatory environment
- A transparent and predictable legal regime
- Improved investment climate through better infrastructure

In view of the same, following trade facilitation measures are provided under FTP:

- Free passage will be provided to export consignment and there will not be any seizure of export related stock except in exceptional cases.
- Single window system to facilitate export of perishable agricultural produce.
- DGFT is implementing the Niryat Bandhu Scheme for mentoring new and potential exporter on the intricacies of foreign trade through counseling, training and outreach programmes including the 'Districts as Export Hubs[3]'.
- **DGFT online customer portal (https://dgft.gov.in)** provides information relating to export and import including Acts, rules, policy and procedures. Online facilities for e-RCMC/RC related processes, e-Certificate of Origin (e-CoO) and Quality Control and Trade Disputes (QCTD) are also available on said common digital platform.

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[3] *The concept of 'Districts as Export Hubs' has been discussed subsequently.*

- DGFT has undertaken a number of IT Initiatives to enable a paperless, contactless and transparent environment for availing benefits under the export promotion schemes.
- A dedicated 24 X 7 Helpdesk facility has been put in place to assist the exporters in filing online applications on the DGFT portal and other matters pertaining to FTP.
- A large number of Trade Facilitation measures have been taken by Customs Department[4].

Trade facilitation measures introduced with an option available to the Central Government for consultation with relevant stakeholders to seek their views and also providing the mechanism on best endeavour basis, to inform reasons for not accepting views concerning the formulation or amendment of the FTP.

Consultation with Stakeholders

The Central Government, in the course of formulation of FTP, as and when it deems reasonable to do so, may seek views/ suggestions/ comments/ feedback from relevant stakeholders, including importers/exporters/industry experts with regard to formulation, incorporation of specific provision(s) or amendments in the FTP, and to the extent possible, 30 days' time-period may be provided to such relevant stakeholders for submission of their views/ suggestions/comments/feedback.

However, Central Government reserves the right to suo moto formulate, amend or incorporate any specific provisions, without seeking views, suggestions, comments, or feedback from stakeholders.

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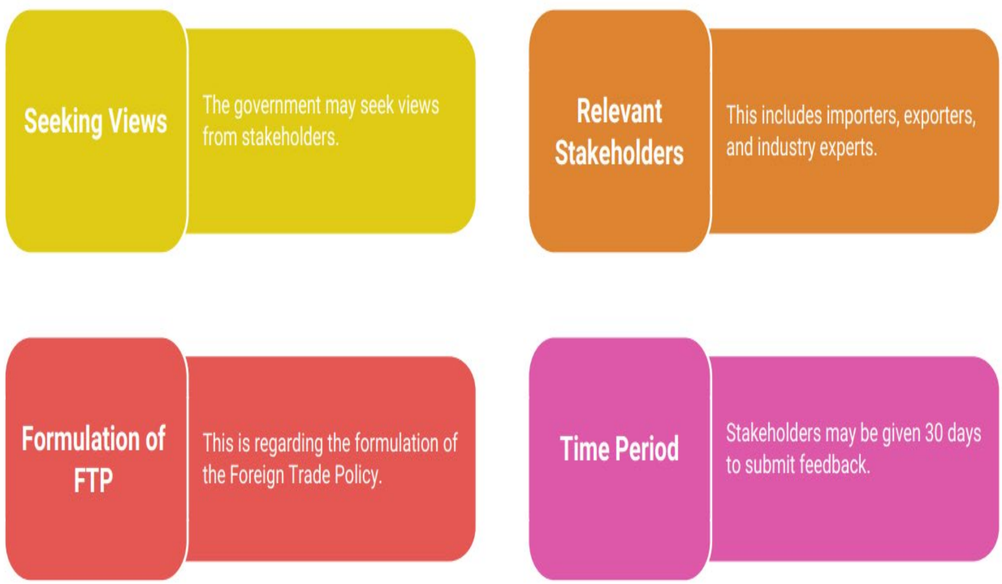
[4] *Some of these measures are 24X7 customs clearance in specified seaports and airports, Single Window Interface for Trade (SWIFT) under customs which allows importers and exporters, the facility to lodge their clearance documents online at a single point only, E-Sanchit or E-Storage and Computerized Handling of Indirect Tax documents facilitates traders with paperless processing, TURANT Customs (faceless assessment), Compliance Information Portal (CIP) which is one stop solution for information on all clearance related procedures, duties, fee and charges for import/export of any goods, etc.*

Soliciting of views, suggestions, comments or feedback

If the views, suggestions, comments or feedback are not incorporated in the FTP, the Central Government may to the extent possible and if deems reasonable to do so, provide, to the relevant stakeholders, including importers/exporters/industry experts the reasons for not considering their views etc. while formulating, amending or incorporating specific provisions in the FTP.



However, Central Government is not obliged or mandated to disclose reasons for not incorporating views etc., that

(i) ***has the potential to or will adversely affect trade relations with any foreign country.***

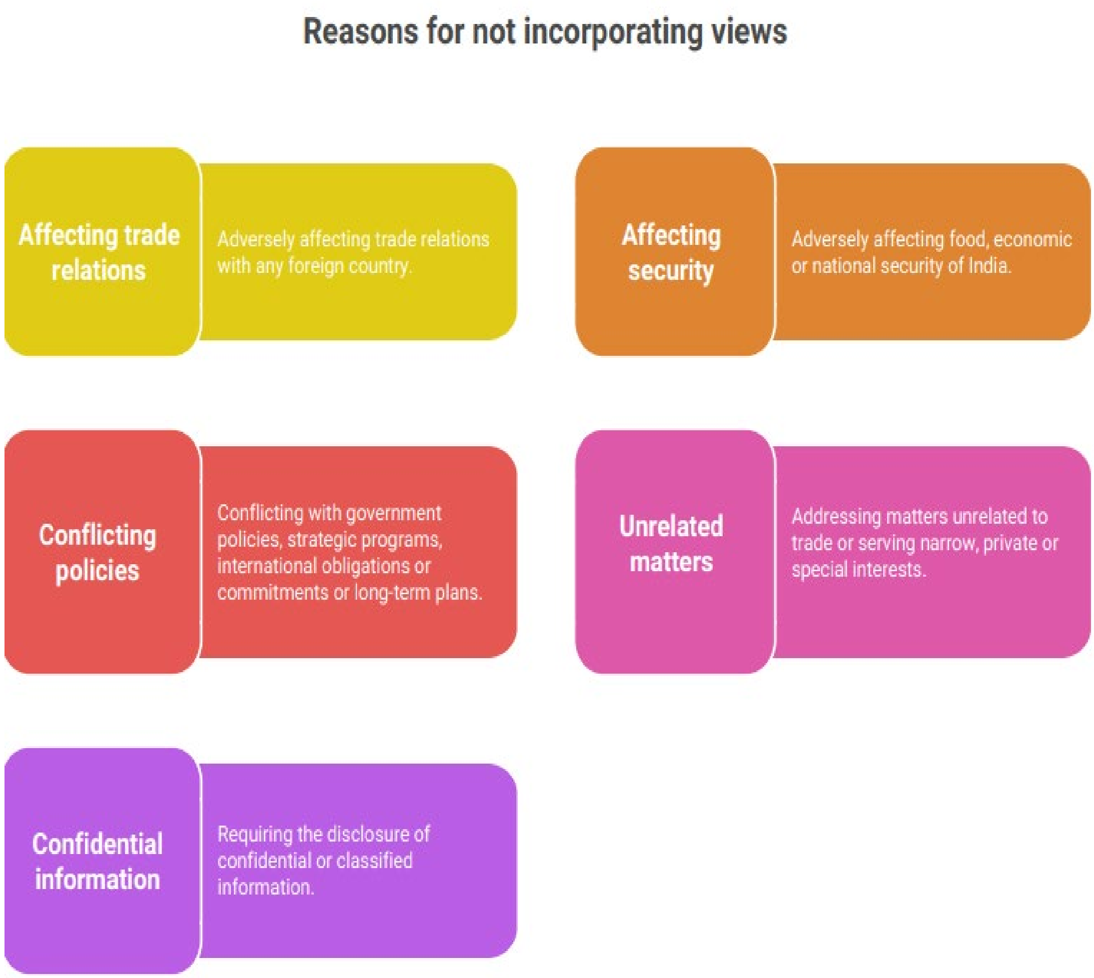
(ii) ***would adversely affect food, economic or national security of India;***

(iii) ***is in conflict with any government policies, strategic programs, international obligations or commitments or long-term plans and would undermine the objectives of such policies or programs;***

(iv) ***addresses matters unrelated to trade or serve narrow, private or special interests to the detriment of or contrary to the broader public interest, good; or***

(v) ***would require the disclosure of confidential or classified information Nothing shall confer any legal right whatsoever on any person to seek reasons for his views comments, opinions or feedback, not being incorporated in the FTP thereof.***

Further, no legal right shall be conferred on any person to seek reasons for his views, comments, opinions or feedback, not being incorporated in the FTP thereof.



AUTHORIZED ECONOMIC OPERATOR (AEO)

Under AEO programme of Indian Customs, a business entity engaged in international trade is granted AEO status if it is approved by Customs as compliant with supply chain security standards. Such entities are considered as trusted trade partner of Indian customs.

AEO

AEO status holders get extensive benefits including preferential customs treatment in terms of reduced examination and faster processing and clearance of cargo, deferred payment of duty, direct port delivery/entry, enhanced border clearance privileges in Mutual Recognition Agreement (MRA) partner countries, greater facilitation and self-certification. AEO programme is based on WCO's SAFE Framework of Standards (FoS).

TOWNS OF EXPORT EXCELLENCE (TEE)

TEE

Selected towns which are contributing handsomely to India's exports by producing goods of specified amount may be granted recognition as TEE. They will be provided targeted support and infrastructure development to maximize their export competitiveness and enable them to move up the value chain and also to tap new markets by granting specified privileges to them.

STATUS HOLDERS

Status Holders are exporter firms recognised as business leaders who have excelled in international trade and have successfully contributed to country's foreign trade. They are expected to not only contribute towards India's exports but also provide guidance and handholding to new entrepreneurs. All exporters of goods, services and technology having an import-export code (IEC) number shall be eligible for recognition as a status holder. Status recognition depends upon export performance**.

Export performance – All 3 preceding FYs

An applicant shall be categorized as status holder upon achieving the threshold export performance in the current and preceding three financial years[5], as indicated below:

Status category	Export Performance Threshold In USD Million
One Star Export House	3
Two Star Export House	15
Three Star Export House	50
Four Star Export House	200
Five Star Export House	800

****Points which merit consideration while computing export performance for grant of status:**

- The export performance shall be counted on the basis of FOB of export earnings in freely convertible foreign currencies or in Indian Rupees
- For deemed export, FOR value of exports in Indian Rupees shall be converted in US$ at the exchange rate notified by CBIC, as applicable on 1st April of each Financial Year.

STATUS HOLDERS

- For granting status, an export performance would be necessary in all the three preceding FYs.
- Export performance is not transferrable among IEC holders.

[5] **Separate provisions regarding Status Holder recognition are prescribed for Gems & Jewellery sector. FTP provisions relating to Gems & Jewellery sector are not relevant for examination purpose.*

- Exports made on re-export basis shall not be counted for recognition.
- Export of items under authorization, including SCOMET items, would be included for calculation of export performance.
- For calculating export performance for grant of One Star Export House Status category,
  - exports by IEC holders under Micro and Small Enterprises,
  - manufacturing units having ISO/BIS certification,
  - units located in Northeastern States including Sikkim and Union Territories of Jammu, Kashmir and Ladakh and
  - export of fruits and vegetables

  shall be granted double weightage once in any of these categories.

Privileges of Status Holders: Status holders are eligible for privileges as under:

(a) Authorisation and custom clearances for both imports and exports on self-declaration basis.

(b) Fixation of Input Output Norms on priority i.e. within 60 days by Norms Committee[6].

(c) Exemption from compulsory negotiation of documents through banks. Exception are remittance/ receipts.

(d) Exemption from furnishing of Bank Guarantee in Schemes under FTP unless otherwise specified.

(e) Two Star Export Houses and above are permitted to establish export warehouses.

(f) Manufacturers who are also status holders (Three Star/Four Star/Five Star) will be enabled to self-certify their manufactured goods (as per their Industrial

[6] *Norms Committee in the DGFT is for the approval of adhoc input – output norms in cases where SION does not exist and recommends SION to be notified in DGFT.*

Entrepreneurs Memorandum (IEM)[7] / Industrial License (IL)[8] /Letter of Intent (LOI)[9]) as originating from India with a view to qualify for preferential treatment under specified agreements.

(g) Status holders shall be entitled to export freely exportable items[10] on free of cost basis for export promotion subject to a specified annual limit.

(h) The status holders would be entitled to preferential treatment and priority in handling of their consignments by the concerned agencies.

Skilling and mentorship obligations of Status Holders

Status Holders (other than One Star Export House) are being made "partners" in providing mentoring and training in international trade to specified number of trainees each year based on status they achieve.

7. OTHER MISCELLANEOUS PROVISIONS

DEVELOPING DISTRICTS AS EXPORT HUBS

Every district has products and services which are being exported, and can be further promoted, along with new products/ services, to increase production, grow exports, generate economic activity and achieve the goal of Atma Nirbhar Bharat, Vocal for local and Make in India. Products/services (GI products, agricultural clusters, toy clusters etc.) with export potential in each District have to be identified and institutional mechanism in the form of District Export Promotion Committees

[7] *Industrial undertakings exempted from the requirements of Industrial Licensing under THE INDUSTRIES (DEVELOPMENT AND REGULATION) ACT I (D&R),1951 are required to file information relating to setting up of industries is known as IEM (Industrial Entrepreneur Memorandum).*

[8] *An industrial license is a legal authorization or permission granted by the government to establish and operate an industrial enterprise in certain sectors or for specific activities.*

[9] *Letter of Intent (LOI) typically refers to a document issued by an exporter to indicate their intention to export goods or services. The LOI serves as an initial communication between the exporter and the buyer, outlining the key terms and conditions of the proposed export transaction.*

[10] *excluding Gems and Jewellery, Articles of Gold and precious metals*

(DEPCs) at the district level is to be created to provide support for export promotion and address the bottlenecks for export growth in the districts. A District Export Action Plan (DEAP) may be prepared for each district. 2-3 high potential products/services from the districts may be prioritised and comprehensive plan for their export growth may be prepared and implemented. DGFT Regional Authorities will be engaging with all the relevant State and Central agencies to take forward this initiative in each district.

QUALITY COMPLAINTS AND TRADE DISPUTES

In case of import/export, owner is liable to state the value, quality and description of the goods/services/technology to the best of his knowledge and belief, in the Bill of Entry or the Shipping Bill or any other prescribed document. In case of export, certification regarding quality and specification of the goods/ services/technology being in accordance with the terms of export contract is also required.

Necessary action is prescribed against the erring exporters/importers under the FT(D&R) Act, as amended and under Foreign Trade (Regulation) Rules, 1993. Further, a mechanism has been laid down to resolve complaints/ trade disputes between foreign buyer/supplier and Indian exporter/importer in respect of quality of goods/services/technology supplied or unethical commercial dealings including non-supply/ partial supply/ wrong supply/ non- payment; non-adherence to delivery schedules, etc.

Committee on Quality complaints and Trade Disputes (CQCTD) will be responsible for enquiring and investigating into all quality related complaints and other trade related complaints falling under the jurisdiction of the respective RAs. It will take prompt and effective steps to redress and resolve the grievances of the importers/ exporters and overseas buyers/ suppliers.

SCOMET: SPECIAL CHEMICALS, ORGANISMS, MATERIALS, EQUIPMENT AND TECHNOLOGIES

SCOMET

India is a signatory to international conventions on disarmament and non-proliferation and is a member of major multilateral export control regimes. Resultantly, export of dual-use items, including software and technologies, having potential civilian/ industrial applications as well as use in weapons of mass destruction is regulated under FTP. It is either prohibited or is permitted under an Authorization unless specifically exempted. SCOMET list is our

National Export Control List of dual use items munitions and nuclear related items, including software and technology and is aligned to the control lists of the all the multilateral export control regimes and conventions.

8. PROVISIONS REGARDING IMPORTS AND EXPORTS

A. GENERAL PROVISIONS APPLICABLE TO IMPORT AND EXPORT OF GOODS

Before entering into a transaction of import or export, one needs to ascertain whether the specific item is 'free' or 'restricted' or 'prohibited' for import or export, and whether it is required to be traded exclusively through a State Trading Enterprise (STE). Prohibitions / restrictions on import or export can be imposed by the DGFT through a notification for specified reasons which are essentially the public interest factors. If there is a restriction, an authorisation is required for export/ import; and the import authorisations are for the 'actual user' only, unless this condition is specifically dispensed with by the DGFT. Authorisation can be applied for on the portal of the DGFT, dgft.gov.in by using the applicant's IEC number.

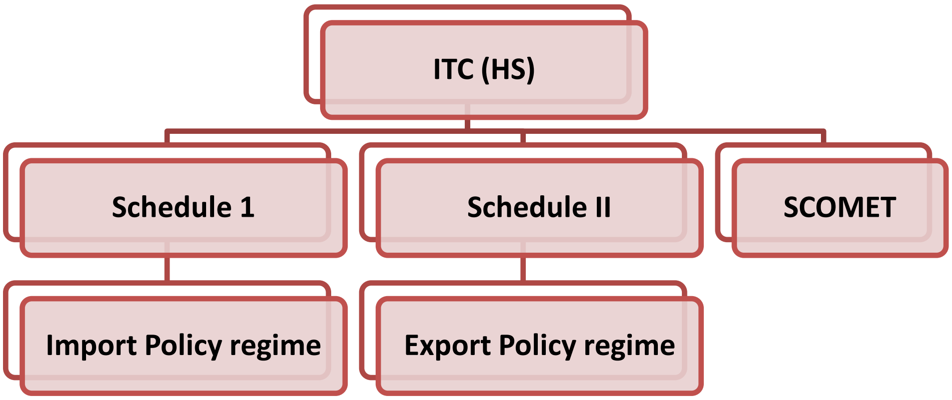
Prohibitions on import and export have been imposed for specified countries, organisations, groups, individuals etc. Further, product specific prohibitions are also imposed. Special schemes may be devised to promote and regulate trade and strengthen economic ties with neighbouring countries.

Imported goods are required to comply with all domestic laws applicable to domestically produced goods, unless exempted. In addition, the DGFT may prescribe procedures by means of a public notice, to be followed by an importer or exporter.

Other general provisions regarding export and import have been outlined as follows:

1. **ITC(HS) [Indian Trade Classification (Harmonised System)]:** The information regarding status of the goods being free/restricted/prohibited / traded through STE, for import/export is available in the ITC(HS), i.e. import/export policies for all goods are indicated against each item as per its ITC(HS). In addition to this status under the FTP, import or export may be subject to restrictions or conditions under any other law.

International Harmonised System goods nomenclature was adopted in India for import-export operations. Indian custom uses eight-digit ITC-HS codes to suit the national trade requirements. The same system is used for classifying goods in the Customs Tariff. The classification schedule under ITC (HS) is referred for import or export status and restrictions, while the classification schedule under the Customs Tariff, read with relevant exemption notifications, is referred for rate(s) of customs duty on the goods.



2. **State Trading Enterprises:** ITC(HS) specifies against certain goods that they can be imported/exported only through 'State Trading Enterprises' notified by DGFT. State Trading Enterprises (STEs) are governmental/non-governmental enterprises, including marketing boards, which deal with goods for export and /or import. However, DGFT has the discretion to issue authorisation to other entities to import or export goods that are notified for exclusive trading through STEs.

   Some of the STEs are Food Corporation of India, Oil and Natural Gas Corporation Ltd, National Fertilizers Limited, Indian Rare Earth Ltd., National Dairy Development Board, National Agricultural Cooperative Marketing Federation of India (NAFED), State Cooperative Marketing Federation, etc.

3. **Importer-Exporter Code (IEC):** A person can undertake export or import activity only after obtaining Importer-Exporter Code (IEC) unless specifically exempted. It is a ten-character alphanumeric number allotted to an entity. It is the same number as the applicant's PAN but is issued separately by the DGFT. An online application has to be filed for IEC. Specified categories of importers or exporters are exempted from obtaining IEC. IEC details have to be

electronically updated every year, even if there are no changes; failing which it will be de-activated till updation.

4. Mandatory documents:

- **For export,** the following documents are mandatory:
  1. Bill of Lading/ Airway Bill/ Lorry Receipt/ Railway Receipt/Postal Receipt
  2. Commercial Invoice cum Packing List (or separate invoice and packing list)
  3. Shipping Bill/Bill of Export/ Postal Bill of Export
- **For import,** the following documents are mandatory:
  1. Bill of Lading/Airway Bill/Lorry Receipt/ Railway Receipt/Postal Receipt
  2. Commercial Invoice cum Packing List (or separate invoice and packing list)
  3. Bill of Entry

For import/export of specific goods or in specific cases of export or import, additional documents may be notified/sought.

5. Penal action and placing of an entity in Denied Entity List (DEL)

(a) Penal action

In following situations, a person shall be liable to penal action under FT (D&R) Act and rules and orders made thereunder, FTP and any other law for time being in force:

(i) authorisation holder:

- violates any condition of such Authorisation
- fails to fulfill export obligation
- fails to deposit the requisite amount within the period specified in demand notice

(ii) any information/particulars furnished by applicant subsequently found untrue/incorrect[11]

(b) Denied Entity List (DEL)

A firm may be placed under DEL, by the concerned Regional Authority (RA) of the DGFT. In such a case:

(i) firm may be refused grant or renewal of a licence/authorization /certificate/scrip/any instrument bestowing financial/fiscal benefits, and

(ii) all new licences, authorisations, scrips, certificates, instruments etc. will be blocked from printing/ issue/renewal.

A firm's name can be removed from DEL, by the concerned RA for reasons if the firm completes Export Obligation/ pays penalty/ fulfils requirement of demand notice(s) issued by the RA/submits documents required by the RA.

B. PROVISIONS RELATING TO IMPORT OF GOODS

1. 'Actual user' condition: Goods which are importable freely without any 'restriction' may be imported by any person. However, if such imports require an authorisation, actual user alone may import such good(s) unless said condition is specifically dispensed with by DGFT.

2. Import of specific categories of goods

(a) Samples: Import of samples of even 'restricted' items, is allowed without import authorisation. Exceptions are defence / security items, seeds, bees, and new drugs; these need authorisation.

Duty free import of samples upto ₹ 3,00,000 for all exporters shall be allowed subject to terms and conditions of customs notification[12] as amended.

(b) Gifts: Import of gifts (including those purchased from e-commerce portals) through post / courier, where customs clearance is sought as gifts, is prohibited. Exceptions are 'rakhi' and life-saving medicines.

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[11] *With a view to raising ethical standards and for ease of doing business, DGFT has provided for self-certification system under various schemes in FTP. In such cases, applicants is expected to undertake self-certification with sufficient care and caution in filling up information/ particulars.*

[12] *Notification No. 154/94 Customs dated 13.07.1994*

Gifts, however, can be imported upon payment of applicable customs duties. If duty leviable on rakhi is upto ₹ 100, no duty will be collected on the same.

(c) **Passenger baggage:** Following are allowed to be imported as part of passenger baggage without an authorisation subject to the Baggage Rules, 2016:

- Bona-fide household goods and personal effects
- Samples of items freely importable under FTP*
- Drawings, patterns, labels, price tags, buttons, belts, trimming and embellishments required for export, imported as part of the passenger baggage of exporters coming from abroad, upto prescribed value limit.

**Any item(s) including Samples/Prototypes of items whose import policy is "restricted" or "prohibited" or is channelised through STEs are not permitted as part of passenger baggage except with a valid authorization.*

(d) **Re-import of repaired goods:** Capital goods, equipment, components, parts and accessories, whether imported or indigenous, except those restricted under ITC (HS) may be sent abroad for repairs, testing, quality improvement or upgradation or standardization of technology and re-imported without an Authorisation.

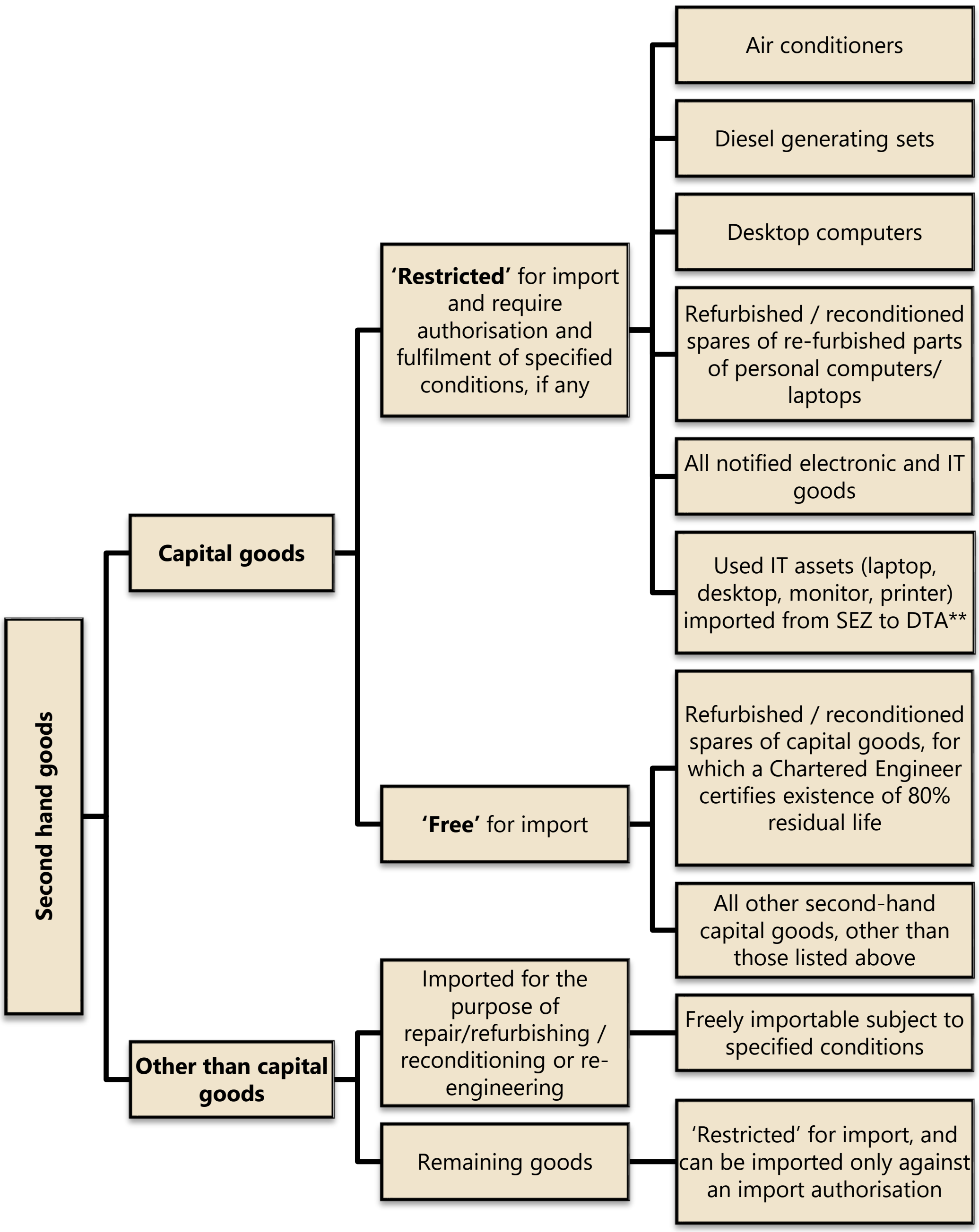
(e) **Goods used in projects abroad:** Project contractors after completion of projects abroad, may import without an Authorisation, goods including capital goods used in the project, provided they have been used for at least one year.

(f) **Prototypes:** New / second hand prototypes / second hand samples may be imported without an Authorisation on the following conditions:

- The importer is an Actual User (industrial)
- He is engaged in production of, or having industrial license / letter of intent for research in an item for which prototype is sought for product development or research, as the case may be,
- The importer files a self-declaration to that effect, to the satisfaction of Customs authorities.

(g) **Metallic waste & scrap:** Import of any form of metallic waste, scrap will be subject to the condition that it will not contain hazardous, toxic waste, radioactive contaminated waste / scrap containing radioactive material, any type of arms, ammunition, mines, shells, live or used cartridge or any other explosive material in any form either used or otherwise.

(h) **Second hand goods:** Import policy for second hand goods is as follows:



**Import policy of used IT assets (laptop, desktop, monitor, printer) imported from SEZ to DTA, subject to fulfilment of specified conditions, has been notified in the FTP. The said import is restricted and requires authorization.

3. Import of items under Advance Authorisation/EOU/SEZ enabled without compliance to mandatory Quality Control Orders (QCO)

Quality Control Orders (QCOs) are regulatory mandates issued by the Indian government to ensure that products meet specific quality standards. These orders, typically issued by the Bureau of Indian Standards (BIS) under the BIS Act, 2016, apply to a wide range of products to protect consumer safety, health, and environment. Domestic manufacturers as well as importers need to ensure that products covered by QCOs must not be manufactured/imported without compliance with specific standards.

Enabling provisions have been incorporated in FTP for exempting inputs imported by Advance Authorisation holders, EOUs and SEZ from mandatory Quality Control Orders (QCOs). However, import of inputs under Advance Authorisation/EOU/SEZ without compliance to the mandatory QCOs, shall be subjected to the following conditions:

(i) For Advance Authorisation:

(a) Import of inputs under the Advance authorization without compliance to the mandatory QCOs shall be with pre import condition. Such inputs shall be utilised in the manufacturing of the export product (making normal allowance for wastage) and shall be exported under the same authorization. Unutilized imports shall not be transferred to DTA, even after regularization of default in fulfilment of export obligation. It shall be destroyed in the presence of jurisdictional GST/Customs authorities or may be re-exported. In addition, such unutilised imports shall be liable to payment of effective duty along with interest to customs authorities and specified composition fee to DGFT.

(b) Said Exemption shall be specifically endorsed in the advance authorization, upon the request of the authorization holder.

(c) The exemption from QCO will be available for physical exports only and such exemption will not be allowed for deemed exports for Advance Authorisation Holders.

(d) Import of Inputs without compliance to the mandatory QCOs under DFIA scheme is not allowed.

(ii) For EOUs

Exemption from applicability of mandatory QCOs issued under the BIS Act, 2016, shall be provided to EOU on import of inputs which are required for export production. No DTA clearance of such inputs or goods manufactured made out of such inputs, are allowed.

An undertaking to that effect will be submitted to the Customs authorities by the EOU at the time of importation and a copy of the same shall also be submitted to the Development Commissioner concerned. The exemption from QCO will be available for physical exports only and such exemption will not be allowed for deemed exports.

(iii) For SEZ

Exemption from applicability of mandatory QCOs issued under the BIS Act, 2016, shall be provided to SEZ on import of inputs which are required for export production. No DTA clearance of such inputs or goods manufactured made out of such inputs, are allowed.

An undertaking to that effect will be submitted to the concerned Development Commissioner of the SEZ by the SEZ Unit at the time of importation. The exemption from QCO will be available for physical exports only.

Above exemption shall be applicable only for the list of notified Ministries/Departments whose notifications on mandatory QCOs are exempted by the DGFT for goods to be utilised/consumed in manufacture of export products.

4. **Miscellaneous provisions regarding import:** Some of the provisions to be noted are –

- Goods for import into India can be sold on the high seas, subject to FTP/other laws in force.
- Merchanting trade means shipment of goods from one foreign country to another foreign country without touching Indian ports, involving an Indian intermediary. This is allowed, subject to RBI guidelines, except for goods in the CITES[13] and SCOMET lists.
- Further, merchanting trade carried out within one specific foreign country is also permitted, subject to RBI guidelines, except for goods in the CITES and SCOMET lists.
- Import of capital goods under lease financing does not require any specific permission from the DGFT.
- For imported goods, **Bank Guarantee / Letter of Undertaking/ Bond (BG/ LUT /Bond)** is to be executed with customs in case of duty-free import or otherwise required, before clearance of goods. For indigenously sourced goods, an authorisation-holder has to execute LUT/BG/Bond with the RA concerned, before sourcing such material.

C. PROVISIONS RELATING TO EXPORT OF GOODS

All goods may be exported without any restriction except to the extent that such exports are regulated by ITC(HS) or any other provision of FTP or any other law for the time being in force.

1. **Benefits for supporting manufacturers:** Supporting manufacturer is one who manufactures goods/products or any part/ accessories/ components of a good/ product for a merchant exporter/manufacturer exporter under a specific Authorisation. For any benefit to accrue to the supporting manufacturer, the names of both supporting manufacturer as well as the

[13] *CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) is an international agreement between governments. Its aim is to ensure that international trade in specimens of wild animals and plants does not threaten the survival of the species.*

merchant exporter must figure in the concerned export documents, especially in tax invoice / shipping bill / bill of export/ airway bill.

2. **Third Party Exports:** Third party exports is allowed under FTP. Third-party exports means exports made by an exporter/manufacturer on behalf of another exporter(s). In such cases, export documents such as shipping bills shall indicate names of both manufacturer exporter/manufacturer and third-party exporter(s). Bank Realisation Certificate (BRC), Self-Declaration Form (SDF), export order and invoice should be in the name of third-party exporter.

3. **Samples:** Exports of trade and technical samples of goods of freely importable items are allowed without any limit.

4. **Gifts:** Goods including edible items, of value not exceeding ₹ 5,00,000 in a licensing year (1st April-31st March), may be exported as a gift. However, items mentioned as restricted for exports in ITC(HS) shall not be exported as a gift, without an authorisation.

5. **Passenger baggage:** Bona-fide personal baggage may be exported either along with passenger or, if unaccompanied, within 1 year before or after passenger's departure from India. However, items mentioned as restricted for exports in ITC(HS) shall not be exported as a gift, without an Authorisation. Samples that freely exportable can be exported as part of passenger baggage. Authorisation will be required for restricted items.

   Samples of freely exportable items may be exported as part of passenger baggage without an authorisation.

6. **Import for export**

   - Goods that are freely importable as well as freely exportable can be imported and then exported in same or substantially the same form, without any authorisation.
   - Goods including capital goods (both new and second hand) can be imported under customs bond and then cleared for export against freely convertible foreign currency provided they are freely exportable. This includes goods that are 'restricted' for import.

- Capital goods that are freely importable and freely exportable can be imported for export upon execution of LUT/BG with the customs authorities.
- Notwithstanding the above, goods of other than Indian origin that are 'restricted' for export (other than 'prohibited' or SCOMET items) but 'free' for import can be imported for exports in same or substantially the same form. Such goods shall be kept in bonded warehouse and re-exported from there subject to provisions of section 69 of the Customs Act, 1962.
- Goods that are imported against payment in freely convertible foreign currency can be exported only against payment in freely convertible foreign currency, unless otherwise notified.

7. Payments and Receipts on Imports / Exports:

(a) **Denomination of Export Contracts:** Export contracts may be denominated either in Indian rupees or freely convertible currency, but export proceeds should be realised in freely convertible foreign currency[14]. However, in specified cases, exports proceeds may be realized in rupees subject to fulfilment of specified conditions.

(b) **Non-realisation of export proceeds:** If an exporter fails to realize export proceeds within time specified by RBI, he shall be liable to return all benefits/ incentives availed against such exports and shall be liable to penal action under FT (D&R) Act and the FTP. However, if such non-realization is for reasons beyond his control, he may approach RBI for writing off the unrealized amount.

(c) **Export Credit Agencies (ECAs):** ECAs provide financial support to exporters. They support exports by insurance, guarantee and also direct

[14] *Freely convertible foreign currency refers to a currency that can be exchanged or converted into other currencies without significant restrictions or limitations imposed by the government or regulatory authorities.*

lending. For instance, Export Credit Guarantee Corporation of India Ltd. (ECGC), Exim Bank, etc.

8. **Export Promotion Councils:** Export Promotion Councils (EPCs) are organizations of exporters, set up to promote and develop Indian exports. Each Council is responsible for promotion of a particular group of products/ projects/services. EPCs are also eligible to function as Registering Authorities to issue **Registration-cum-Membership Certificate (RCMC)**. RCMC is required to be furnished by any person, applying for an Authorisation to import/ export under the FTP (except 'Restricted' items) or applying for any other benefit or concession under FTP.

9. **Self-certification of origin of goods:** Till now, certificate of origin of goods for export was issued by the designated agencies. Now, **self-certification** has been enabled for **"approved exporters"**. Manufacturers who are also status holders will be eligible for the 'approved exporter' scheme.

   Approved Exporters will be entitled to self-certify their manufactured goods as originating from India with a view to qualifying for preferential treatment under different Preferential Trade Agreements [PTAs], Free Trade Agreements [FTAs], Comprehensive Economic Cooperation Agreements [CECA] and Comprehensive Economic Partnerships Agreements [CEPA] which are in operation. Self-certification will be permitted only for the goods that are manufactured as per the IEM/IL/LOI issued to manufacturers.